

Remarks

Applicants respectfully request reconsideration of the application in view of the foregoing amendments and following remarks.

With entry of this amendment, claims 1-8 and 10-41 are pending, claims 32-41 are allowed, and claims 1-8, and 10-33 are rejected. With entry of this amendment, claims 42-49 have been cancelled without prejudice. Previously, claim 9 had been cancelled without prejudice.

Telephonic Interview

Applicants wish to thank the Examiner for extending a telephonic Examiner Interview on October 30, 2007. Claims 1, 10, and 42 were discussed. The Examiner indicated that claims 1 and 10 with the amendments, very similar to those above, would most likely be allowable over the 101 rejection and that independent claims 11, 13, 14, 15, 19, 27, and 34 would be allowable if they have similar amendments. Applicant's representative and Examiner did not come to agreement on claim 42.

Information Disclosure Statement

The Examiner previously crossed out one reference on the Form 1449, German patent application 4133460 A1 to Blonstein, which was originally filed June 21, 2006. The reference was in German. Applicant included a copy of a translation of the bulk of this reference, U.S. Patent 5,319,724, with the reply filed December 27, 2006, and respectfully asks Examiner to review it, as per the procedure described at 37 CFR §1.98(a)(3)(ii).

Allowed Subject Matter

Applicants thank Examiner for indicating that claims 34-41 are allowed.

Claim Rejections Under 35 USC § 101

The action rejects claims 1-8, 10-33 and 42-49 under 35 USC § 101 as directed to non-statutory subject matter.

Computer programs are often recited as part of a claim. USPTO personnel should determine whether the computer program is being claimed as part of an

otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim. The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program. Only when the claimed invention taken as a whole is directed to a mere program listing, i.e., to only its description or expression, is it descriptive material per se and hence nonstatutory. [MPEP, September 2007 revision, 2106.01.I]

Claims 1-8.

Claims 1-8 are directed to a system. Specifically, claims 1-8 all cite “A transform coder.” Applicant respectfully disagrees with the Examiner’s characterization of the claims and relevant law, and believes that the claims in their previous state satisfied 35 USC § 101. Specifically, the claims are directed to a system—a transform coder. As such, they are not directed to computer program as the Action asserts.

Further, “[w]hen a computer program is recited in conjunction with a physical structure, such as a computer memory, USPTO personnel should treat the claim as a product claim.” MPEP 2106.01.I (Sept. 2007 revision.)

Nevertheless, Applicant has amended the above-rejected claims in an effort to expedite prosecution. Specifically, claim 1 has been amended to read:

A transform coder computer system for audio signal processing comprising:
a transient detection component stored in computer system memory operating to process samples of an input signal to identify locations of transients in the input signal....”

Support for this amendment can be found in the specification and figures as initially filed. Further, a specific example of support can be found in the specification at page 6, line 31 to page 7, line 7.

As the claim is directed to a “A transform coder computer system” and includes the further physical structure, “computer system memory,” this claim should be characterized as a machine claim and is therefore statutory. Thus, at least for this reason, Applicants respectfully submit that Claim 1, as amended, is directed to statutory subject matter and request that the rejection under 35 U.S.C. § 101 be withdrawn. Claims 2-8 depend on Claim 1 and at least for that reason should also not be subject to a 35 U.S.C. § 101 rejection.

Independent Claim 10.

Applicant respectfully disagrees with the Examiner's characterization of the claims and relevant law, and believes that claim 10 in its previous state satisfied 35 USC § 101.

Specifically, the claims are directed to a system—a transform coder. As such, they are not directed to computer program as the Action asserts.

Nevertheless, Applicant has amended the above-rejected claims in an effort to expedite prosecution. Specifically, claim 10 has been amended to read:

In a computer-enabled transform coder, a method of adaptively selecting transform window size for signal processing, the method comprising:
storing the measured perceptual quality in memory associated with the transform coder;
retrieving the measured perceptual quality from memory;
using the retrieved measured perceptual quality...

Support for this amendment can be found in the specification and figures as initially filed. Further, a specific example of support can be found in the specification at page 6, line 31 to page 7, line 7.

“When a computer program is recited in conjunction with a physical structure, such as a computer memory, the Office treats the claim as a product claim.” Action, page 2, para. 3. Claim 10 now recites a physical structure, “memory associated with the transform coder,” and recites language tying the claim to the structure, e.g., “storing...in memory” “retrieving...from memory” and “using....” Applicants respectfully submit that claim 10, as amended, is directed to statutory subject matter and request that the rejection under 35 U.S.C. § 101 be withdrawn.

Independent Claims 11, 13, 14, 15, 19, and 27.

Claims 11, 13, 14, 15, 19, and 27 have all been modified in ways similar to claim 10 in that they now all recite “memory associated with the transform coder,” and recite language tying the claim to the structure, e.g., “storing...in memory” “retrieving...from memory” and “using....” Support for these amendments can be found in the specification and figures as initially filed. Further, a specific example of support can be found in the specification at page 6, line 31 to page 7, line 7. Applicants respectfully submit that claims 11, 13, 14, 15, 19, and 27, as amended, are directed to statutory subject matter and request that the rejection under 35 U.S.C. § 101 be withdrawn.

Dependent Claims 12, 16-18, 21-26, and 28-33.

Claims 12, 16-18, 21-26, and 28-33 all depend from claim 11, 13, 14, 15, 19, or 27, and as they depend from statutory claims, are themselves directed to statutory subject matter. Applicant, thus, requests that the rejection under 35 U.S.C. § 101 be withdrawn.

Claims 42-49

Claims 42-49 are rejected by the Action under 35 U.S.C. 101 as being directed to a signal encoded with functional descriptive material. Applicant respectfully disagrees with the Examiner's characterization of the claims and relevant law, and believes that the claims in their previous state satisfied 35 USC § 101. Nevertheless, Applicant has canceled the above-rejected claims without prejudice in an effort to expedite prosecution.

Request for Interview

If any issues remain, the Examiner is formally requested to contact the undersigned attorney prior to issuance of the next Office action in order to arrange a telephonic interview. It is believed that a brief discussion of the merits of the present application may expedite prosecution. Applicants submit the foregoing formal Amendment so that the Examiner may fully evaluate Applicants' position, thereby enabling the interview to be more focused.

This request is being submitted under MPEP § 713.01, which indicates that an interview may be arranged in advance by a written request.

Conclusion

The claims should be allowable. Such action is respectfully requested.

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